

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MATTHEW DE LA HUNT,)
Petitioner,)
v.) Case No. 4:16-CV-2171 NAB
TOM VILLMER,)
Respondent.)

MEMORANDUM AND ORDER

This matter is before the court on Petitioner's Motion for Leave to File an Amended Petition for Writ of Habeas Corpus. [Doc. 7.] Respondent has not filed a response and the time to do so has now passed. In support of his motion, Petitioner asserts that through investigation, he has discovered a new claim for relief.

The Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA") imposes a one year time limit for applications for a writ of habeas corpus by a person in custody pursuant to the judgment of a state court. 28 U.S.C. § 2244(d)(1). Federal habeas proceedings initiated by state prisoners are governed by the Rules Governing Section 2254 Cases in the United States District Courts. *See* Rules Governing Section 2254 Cases in the United States District Courts. Habeas petitions may be amended or supplemented as provided in the rules of procedure applicable to civil actions. 28 U.S.C. § 2242; *see also* Rule 12 Rules Governing Section 2254 Cases in the United States District Courts (federal rules of civil procedure, to the extent that they are not inconsistent with any statutory provisions or rules governing habeas cases, may be applied in

habeas proceedings). The Federal Rules of Civil Procedure state that the court should freely give leave to amend when justice so requires.¹ Fed. Rule Civ. P. 15(a)(2).

In this case, Petitioner timely filed his original Petition in this Court on December 31, 2016. Petitioner's deadline for filing the original Petition was April 6, 2017 and he filed a motion for leave to file an amended petition on that date. Because AEDPA's one-year statute of limitations had not yet run at the filing of the request for an amended petition, the Court will grant Petitioner's motion. *Mayle v. Felix*, 545 U.S. 644, 655-56 (2005). Respondent shall file a response to Petitioner's Amended Petition no later than August 7, 2017. Petitioner shall file any Reply Brief no later than October 6, 2017.

Accordingly,

IT IS HEREBY ORDERED that Petitioner's Motion for Leave to File an Amended Petition for Writ of Habeas Corpus is **GRANTED**. [Doc. 7.]

IT IS FURTHER ORDERED that Respondent shall file the response to Petitioner's First Amended Petition no later than August 7, 2017. Petitioner shall file any Reply Brief no later than October 6, 2017.

Dated this 6th day of June, 2017.

/s/ Nannette A. Baker
NANNETTE A. BAKER
UNITED STATES MAGISTRATE JUDGE

¹ Petitioner must seek leave from the Court to amend his Petition, because a party may amend a pleading as a matter of course within 21 days after serving it or if a response is required, within 21 days after a responsive pleading. Fed. R. Civ. P. 15(a)(1). Petitioner filed his petition on December 31, 2016 and Respondent filed a response on February 21, 2017. Therefore, Petitioner is beyond the time limits for filing an amended petition without consent of Respondent or leave of court. Fed. R. Civ. P. 15(a)(2).